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Paper No. 6

APR 09 2002

OFFICE OF PETITIONS

In re Application of	:
Wach	: DECISION REFUSING
Application No. 09/859,716	: STATUS UNDER
Filed: May 17, 2001	: 37 CFR 1.47
Attorney Docket No. EMPIR-022AUS	:
For: METHOD OF PERFORMING	:
DISTRIBUTED LOAD TESTING	:

This is in response to the petition under 37 CFR 1.47(b), filed January 4, 2002 (Certificate of Mailing Date of October 22, 2001).

The petition is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
- (2) an acceptable oath or declaration;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest; and
- (6) proof of irreparable damage.

Applicant lacks item (1), (2), (3), (4), (5) and (6) set forth above.

As to item (2), the 37 CFR 1.47(b) applicant must make the oath required by 37 CFR 1.63 and 1.64 or 1.175. Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, or Treasurer) thereof should normally sign the necessary oath or declaration. A corporation may authorize any person, including an attorney or agent registered to practice before the Patent and Trademark Office, to sign the application oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney's or agent's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP Section 324. Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or

position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).

A Notice of Missing Parts was mailed on July 13, 2001. The Notice required a signed oath (or petition under 37 CFR 1.47) and a \$65 surcharge. The surcharge was not submitted until January 4, 2002 (Certificate of Mailing Date of *October 22, 2001*). Therefore, payment for a two month extension of time (\$200) has been charged to petitioner's deposit account.

In order to expedite consideration, petitioner may wish to submit the renewed petition under 37 CFR 1.47 by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

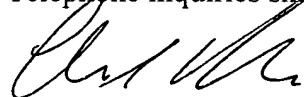
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
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Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy